

January 22, 2018

Hand Delivered

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United States Department of Justice
(ED-WI) Office of the U.S. Attorney
517 E. Wisconsin Avenue – Rm 530
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RE: *United States v. Samy M. Hamzeh*
Case No. 16-CR-21 (WED)

Dear Greg and Paul:

Our continuance request was primarily driven by concerns over the transcripts and some discovery issues. While the Court will sort out the discovery issues, we hope that we can sort out the problems with transcripts. But frankly it will take some work. This memo is broken into three parts: first, outlining the large problems; second, detailing some of the smaller problems (a larger memo on that point is coming); and third our proposed solution. We recognize that this has come late, but it has been a large task working through the transcripts and identifying all the problems. I hope after reviewing this, we can talk on Tuesday or early Wednesday morning and find a solution and a timeline to propose to the Court.

1. The large problems with the 29 transcripts provided.

It's apparent in reviewing the translations that translating Arabic conversations can be a challenging task. It's also apparent that some translators are better at that task than others. Unfortunately, there are some transcripts that should be redone and there are other transcripts that are either mislabeled, out of order, or that continue to rely on summaries rather than verbatim translations. Here are some of the major problems that we have encountered:

- We need an accurate index of all the recordings that identifies the date of the recording, the source of the recording (e.g., Mike, Steve, hidden mike), whether it was audio or video, and whether it has been fully translated. The previous indexes provided are more like a puzzle than an index, and require us to guess the source of the recording. What's more, as to the most recent batch of transcripts, the transcripts identified in the index don't always match the description provided. For instance,
 - Disk 88 appears on page 1043 of our attached combination and page numbering of the transcripts. But it also appears in place of Disk 104, which should be the 1/25 recordings.
 - Disk 79 on your intro sheet is actually disk 81 – according to the face sheet.
 - Disk 92, is supposed to be the 1/24 recording. The beginning of it, however, has Agents Simons and Bisswurm identifying the date as 1/23. This also has the call to his uncle, which takes place a day later.¹
 - Disk 45 is out of order. When you read through it, starting on page 253, there is a disconnect from page 254 through page 263. This part makes more sense at the end of the conversation, after the gun shop.

¹ Page 1035–37.

- Other transcripts are listed as calls but are clearly face to face meetings. We need to know what is video, what is face-to-face, what is a call, who was recording, and who was there.
- Many transcripts still include significant sections that are summaries instead of verbatim translations. These summaries need to be replaced with actual translations. While some summaries are potentially unobjectionable, like those dealing with pages and pages of recitation of prayers, some of these are actually translated.² Yet other portions of the conversations that are necessary (or could be) are not translated.³ As a general matter, some instances are cited in the footnote that should be translated.⁴ That includes places where the translator cannot make the call on what's relevant.⁵

Some of the recordings are just terrible and need to be redone. These would include:

- Disk 72, Call 9, is the one with CHS find-and-replace error, but it's also not a legitimate translation. There are large and strange blocks placed into the transcript which seem to be summaries but are unclear. Skim pages 506-509 and you'll see what I mean.
- Disk 73:2, which appears on page 530. It is, at best, a rough draft. Scroll through it and you'll see corrections made and not made. Points where the translator puts in notes for himself to look at it again.
- Disk 97 should either be scrapped and go with our version or it needs to be redone. The names are off and large portions are not captured.
- Disk 88 seems suspect. Skim pages 1048-1054 and you can see this translation is much different from the others. The speakers are talking in paragraphs, even

² Pages 1112-20.

³ E.g., page 717 (34 minutes with nothing), 736 (lots of summary).

⁴ Page 22, 143 (a mass summary); 137 (too much summary); 234 (summary); disk 72: call 9 (the summaries are everywhere); 717; disk 86 (summaries are everywhere); 1039.

⁵ Pages 234 (a large bracket between Mike and the agent).

pages. These soliloquies seem highly unlikely, given the other thousand pages of transcripts, in which the other person(s) present frequently interject.

That addresses some of the large scale problems with the transcripts.

2. The smaller issues that can and have to be addressed before the transcripts can be used for trial.

There are lots of minor corrections that have to be made throughout the transcripts. These include:

- In all the transcripts, the CHS designation and (at times) the UM designation (for Mike or Steve) needs to be ditched and put in their real names. The names are coming out at trial and some transcripts have them. There are even instances where CHS2 and Mike are used on the same page.⁶
 - So, for instance, disk 72, call 9 (page 501) the CHS had to have been a find and replace and the result is comical.
 - Another instance is Disk 97, where the UM is ascribed to Mike, but at times the translator has it going to Steve, and CHS to Mike, and on some pages it seems to even have Samy mixed up.⁷ I, of course, cannot be certain until our translator or Samy listens.
 - But definitely on page 713, CHS 2 is on part of the page and then within seven lines, they are wondering where he is and that he'll meet them at Landmark, which seems impossible if they are together.
 - Other translators have SB and SH embedded without any certainty that it's actually Samy or Steve.⁸

⁶ Pages 102, 514.

⁷ See page 964.

⁸ Pages 808-809.

- Others have Samy, saying SH, in an incomprehensible manner.⁹
- Other transcripts only have a single CHS and could be very confusing for the jury, even on cross. Some instances are Disks 30 and 97. I think we should all agree that for trial presentation and ease of understanding, the CHS needs to be replaced with the name.
- There needs to be a clear and consistent translation of Kalashnikov. Most of the times that they refer to rifles the three use the term Kalashnikov – sometimes the translator keeps it and others use machine gun.¹⁰ Since it is used to refer to rifles and machine guns and the context clues don't make clear which one is being used, whenever the term (or some derivative) is uttered it should stay Kalashnikov.
- The red lines and edits need to be cleaned up. Disk 73, pages 532 et seq, has a lot of this, and even notes from the translator to listen to it again.¹¹
- We should probably clean up every William Hall and make it William Ho's.

Finally, there are other problems with the transcripts that are beyond us. Attached is a memo from our translator, who listened to disk 79 and compared it to your translators. As you can see there are many errors, which will happen. And while most on that disk are of little consequence, when it comes to those of consequence we need to be on the same page and double check the translation.

3. Our proposal of how to make this go smoother and eliminate problems at trial.

Again, this review has been and will continue to be a huge undertaking. If we're not on the same page, it could be a nightmare at trial. So we'd like to meet and arrive at a way

⁹ Page 905.

¹⁰ Pages 114-15; 125 (Mike carries a Kalashnikov); 145 & 115 (Israelis carry Kalashnikov); 186 (at the gun range referring to a Kalashnikov); 255 (AR-15, which was previously translated as Kalashnikov and on 312 is again a Kalashnikov); 362-63; 456-57 (machine guns); 472-73 (Steve used to shoot Kalashnikovs); 469 (Samy asking about Mike's machine gun even though it was Kalashnikov); page 187 (talk of grabbing a machine gun and the prior page is Kalashnikov).

¹¹ Pages 548-51, 554 & 558.

to present these transcripts. Once we are in agreement on how they'll be presented and used, we'd like to set a date for you to let us know the pages you intend to use and when corrections can be made to those identified.

Once we have those, we will have our translator identify the problematic pages and we will notify you about the ones that we care about. Of course, we have to be more flexible, given that we're reacting to the government's case and may need to impeach the witnesses. Once we have a complete set of transcripts, they are bates stamped and become the record for impeachment.

There has to be some deliberate speed in this endeavor. We need time to for our translator to work on these and make sure that we have a set that can used at trial. We do not want to be in this position again, where the uncertainty that comes with the transcripts as they now stand with misidentified speakers and rough drafts keep us from trial again. Because we were only a month out from trial, we imagine you have a firm idea of the ones that you wanted to use; and we imagine that the very problematic ones that we've identified can be done within a week or so by the FBI's translators. So we'd like to set a definite and short deadline to resolve the transcript problems and move on to the other issues.

I look forward to meeting with you tomorrow or Wednesday morning and working through these issues.

Sincerely,

Craig W. Albee

CWA/cm

Enclosures